

Introduced by Senator Wolk

February 21, 2014

An act to amend Section 12999.5 of, and to add Chapter 3.7 (commencing with Section 14160) to Division 7 of, the Food and Agricultural Code, relating to pesticides.

LEGISLATIVE COUNSEL'S DIGEST

SB 1332, as introduced, Wolk. Pesticides: carbon monoxide pest control devices.

Existing law regulates pesticide use and generally provides that, except for specified provisions that are within the jurisdiction of the Secretary of Food and Agriculture, the enforcement of these provisions is the duty of the Director of Pesticide Regulation. Existing law, until January 1, 2018, authorizes the use of carbon monoxide for the control of burrowing rodent pests under specified conditions, including that the carbon monoxide delivery device be permanently affixed with a warning label, as provided. Existing law provides that a violation of the provisions relating to pesticides, or any regulation adopted pursuant to those provisions, is guilty of a misdemeanor, and further provides, in lieu of misdemeanor prosecution by the director, for civil prosecution by the director, or for the director or a county agricultural commissioner to levy a civil penalty against a person violating those provisions.

This bill would authorize the director to regulate the use of carbon monoxide pest control devices, as defined, and to adopt and enforce regulations to provide for the proper, safe, and efficient use of these devices, as specified. A violation of those provisions would be a misdemeanor, and would also be subject to the provisions authorizing the action to be prosecuted civilly by the director, or for a county agricultural commissioner to levy a civil penalty, in lieu of prosecution

as a misdemeanor. The bill would also make nonsubstantive changes. By expanding the scope of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12999.5 of the Food and Agricultural
2 Code is amended to read:
3 12999.5. (a) In lieu of civil prosecution by the director, the
4 *county agricultural* commissioner may levy a civil penalty against
5 a person violating Division 6 (commencing with Section 11401),
6 Article 10 (commencing with Section 12971) or Article 10.5
7 (commencing with Section 12980) of this chapter, Section 12995,
8 Article 1 (commencing with Section 14001) of Chapter 3, *Chapter*
9 *3.7 (commencing with Section 14160)*, Chapter 7.5 (commencing
10 with Section 15300), or a regulation adopted pursuant to any of
11 these provisions, of not more than one thousand dollars (\$1,000)
12 for each violation. Any violation determined by the *county*
13 *agricultural* commissioner to be a ~~serious~~ *Class A* violation as
14 defined in Section 6130 of Title 3 of the California Code of
15 Regulations is subject to a fine of not more than five thousand
16 dollars (\$5,000) for each violation. It is unlawful and grounds for
17 denial of a permit under Section 14008 for ~~any~~ a person to refuse
18 or neglect to pay a civil penalty levied pursuant to this section once
19 the order is final.
20 (b) If a person has received a civil penalty for pesticide drift in
21 a school area subject to Section 11503.5 that results in a ~~serious~~
22 *Class A* violation as defined in subdivision (a), the *county*
23 *agricultural* commissioner shall charge a fee, not to exceed fifty
24 dollars (\$50), for processing and monitoring each subsequent
25 pesticide application that may pose a risk of pesticide drift made
26 in a school area subject to Section 11503.5. The ~~Agricultural~~
27 ~~Commissioner~~ *county agricultural commissioner* shall continue

1 to impose the fee for each subsequent application that may pose
2 a risk of drift, until the person has completed 24 months without
3 another ~~serious~~ *Class A* violation as defined in subdivision (a).

4 (c) Before a civil penalty is levied, the person charged with the
5 violation shall be given a written notice of the proposed action
6 including the nature of the violation and the amount of the proposed
7 penalty, and shall have the right to request a hearing within 20
8 days after receiving notice of the proposed action. A notice of the
9 proposed action that is sent by certified mail to the last known
10 address of the person charged shall be considered received even
11 if delivery is refused or the notice is not accepted at that address.
12 If a hearing is requested, notice of the time and place of the hearing
13 shall be given at least 10 days before the date set for the hearing.
14 At the hearing, the person shall be given an opportunity to review
15 the *county agricultural* commissioner's evidence and to present
16 evidence on his or her own behalf. If a hearing is not timely
17 requested, the *county agricultural* commissioner may take the
18 action proposed without a hearing.

19 (d) If the person upon whom the *county agricultural*
20 commissioner levied a civil penalty requested and appeared at a
21 hearing, the person may appeal the *county agricultural*
22 commissioner's decision to the director within 30 days of the date
23 of receiving a copy of the *county agricultural* commissioner's
24 decision. The following procedures apply to the appeal:

25 (1) The appeal shall be in writing and signed by the appellant
26 or his or her authorized agent, state the grounds for the appeal, and
27 include a copy of the *county agricultural* commissioner's decision.
28 The appellant shall file a copy of the appeal with the *county*
29 *agricultural* commissioner at the same time it is filed with the
30 director.

31 (2) The appellant and the *county agricultural* commissioner
32 may, at the time of filing the appeal or within 10 days thereafter
33 or at a later time prescribed by the director, present the record of
34 the hearing including written evidence that was submitted at the
35 hearing and a written argument to the director stating grounds for
36 affirming, modifying, or reversing the *county agricultural*
37 commissioner's decision.

38 (3) The director may grant oral arguments upon application
39 made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set ~~therefor.~~ *for the oral argument.* The times may be altered by mutual agreement of the appellant, the *county agricultural* commissioner, and the director.

(5) The director shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the director finds substantial evidence in the record to support the *county agricultural* commissioner's decision, the director shall affirm the decision.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the director may affirm the *county agricultural* commissioner's decision, modify the *county agricultural* commissioner's decision by reducing or increasing the amount of the penalty levied so that it is within the director's guidelines for imposing civil penalties, or reverse the *county agricultural* commissioner's decision. Any civil penalty increased by the director shall not be higher than that proposed in the *county agricultural* commissioner's notice of proposed action given pursuant to subdivision (c). A copy of the director's decision shall be delivered or mailed to the appellant and the *county agricultural* commissioner.

(8) Any person who does not request a hearing pursuant to subdivision (c) may not file an appeal pursuant to this subdivision.

(9) Review of a decision of the director may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) The *county agricultural* commissioner may levy a civil penalty pursuant to subdivisions (a), (c), and (d) against a person violating paragraph (1), (2), or (8) of subdivision (a) of Section 1695 of the Labor Code, which pertains to registration with the *county agricultural* commissioner, carrying proof of that registration, and filing changes of address with the *county agricultural* commissioner.

(f) After the exhaustion of the appeal and review procedures provided in this section, the *county agricultural* commissioner or his or her representative may file a certified copy of a final decision

1 of the *county agricultural* commissioner that directs the payment
2 of a civil penalty and, if applicable, a copy of any decision of the
3 director or his or her authorized representative rendered on an
4 appeal from the *county agricultural* commissioner's decision and
5 a copy of any order that denies a petition for a writ of
6 administrative mandamus, with the clerk of the superior court of
7 any county. Judgment shall be entered immediately by the clerk
8 in conformity with the decision or order. No fees shall be charged
9 by the clerk of the superior court for the performance of any official
10 service required in connection with the entry of judgment pursuant
11 to this section.

12 SEC. 2. Chapter 3.7 (commencing with Section 14160) is added
13 to Division 7 of the Food and Agricultural Code, to read:

14 CHAPTER 3.7. CARBON MONOXIDE PEST CONTROL DEVICES
15

16 14160. For purposes of this chapter, "carbon monoxide pest
17 control device" means any method or instrument using carbon
18 monoxide to prevent, eliminate, destroy, or mitigate burrowing
19 rodent pests.
20

21 14161. The director may regulate the use of carbon monoxide
22 pest control devices, and may adopt and enforce regulations to
23 provide for the proper, safe, and efficient use of these devices for
24 the protection of public health and safety, and the environment.

25 SEC. 3. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.